

AMENDED IN SENATE JUNE 21, 2005
AMENDED IN ASSEMBLY MARCH 31, 2005
CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 316

Introduced by Assembly Member Nakanishi

February 10, 2005

An act to amend ~~Section 7122.2 of Sections 7122.2, 7159, and 7167 of, and to repeal Sections 7159.3 and 7159.4 of, the Business and Professions Code, and to amend Section 1689.7 of the Civil Code,~~ relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 316, as amended, Nakanishi. ~~Contractors: arbitration.~~

(1) Under existing law, the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license that has been referred to arbitration does not relieve the qualifying partner, responsible managing officer, or responsible managing employee from responsibility for complying with an award rendered as a result of an arbitration referral.

This bill would instead require a disassociated qualifying partner, responsible managing officer, or responsible managing employee to comply with an arbitration award rendered as a result of acts or omissions committed while acting as the qualifying partner, responsible managing officer, or responsible managing employee.

(2) *Existing law, operative July 1, 2005, requires that a home improvement contract, as defined, and any changes made to that contract, be in writing, legible, and easy to understand, and inform a consumer of his or her right to cancel or rescind the contract. Existing law requires that a home improvement contract contain various*

information, notices, and disclosures for the protection of the consumer. Existing law provides that a violation of these provisions subjects the home improvement contractor to discipline.

This bill would revise and recast these provisions to, among other things, consolidate many of the existing requirements for home improvement contracts and would set forth the information, notices, and disclosures required to be included as part of the contract.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7122.2 of the Business and Professions
2 Code is amended to read:

3 7122.2. (a) Notwithstanding Section 7068.2 or any other
4 provisions of this chapter, the disassociation of any qualifying
5 partner, responsible managing officer, or responsible managing
6 employee from a license that has been referred to arbitration
7 pursuant to Section 7085 shall not relieve the qualifying partner,
8 responsible managing officer, or responsible managing employee
9 from the responsibility of complying with an arbitration award
10 rendered as a result of acts or omissions committed while acting
11 as the qualifying partner, responsible managing officer, or
12 responsible managing employee for the license as provided under
13 Sections 7068 and 7068.1.

14 (b) Section 7122.5 shall apply to any qualifying partner,
15 responsible managing officer, or responsible managing employee
16 of a licensee that fails to comply with an arbitration award once it
17 is rendered.

18 SEC. 2. Section 7159 of the Business and Professions Code,
19 as added by Section 4 of Chapter 566 of the Statutes of 2004, is
20 amended to read:

21 7159. (a) (1) ~~This section and Sections 7159.3 to 7159.6,~~
22 ~~inclusive, apply to all home improvement contracts, as defined in~~
23 ~~Section 7151.2, between a contractor, whether a general or a~~
24 ~~specialty contractor, who is licensed or subject to be licensed~~
25 ~~pursuant to this chapter with regard to the transaction and who~~
26 ~~contracts with an owner or tenant for home improvement work,~~
27 ~~except that this section and Sections 7159.3 to 7159.6, inclusive,~~
28 ~~do identify the projects for which a home improvement contract~~

1 *is required, outlines the contract requirements and lists the items*
2 *that shall be included in the contract, or may be provided as an*
3 *attachment.*

4 *(2) This section does not apply to service and repair contracts*
5 *projects, as defined in Section 7159.10, provided the contract for*
6 *the applicable services complies with Sections 7159.10 to*
7 *7159.14, inclusive.*

8 ~~A violation of this section by a licensee or~~

9 *(3) Failure by the licensee, his or her agent or salesperson, or*
10 *by a person subject to be licensed under this chapter, or by his or*
11 ~~*her agent or salesperson, to provide the specified information,*~~
12 *notices, and disclosures in the contract, or to otherwise fail to*
13 *comply with any provision of this section, is cause for discipline.*

14 ~~*(a) A home improvement contract and any changes to the*~~
15 ~~*contract shall be in writing and signed by the parties.*~~

16 *(b) For purposes of this section, "home improvement*
17 *contract" means an agreement, whether oral or written, or*
18 *contained in one or more documents, between a contractor and*
19 *an owner or between a contractor and a tenant, regardless of the*
20 *number of residence or dwelling units contained in the building*
21 *in which the tenant resides, if the work is to be performed in, to,*
22 *or upon the residence or dwelling unit of the tenant, for the*
23 *performance of a home improvement, as defined in Section 7151,*
24 *and includes all labor, services, and materials to be furnished*
25 *and performed thereunder, if the aggregate contract price*
26 *specified in one or more improvement contracts, including all*
27 *labor, services, and materials to be furnished by the contractor,*
28 *exceeds five hundred dollars (\$500). "Home improvement*
29 *contract" also means an agreement, whether oral or written, or*
30 *contained in one or more documents, between a salesperson,*
31 *whether or not he or she is a home improvement salesperson,*
32 *and an owner or a tenant, regardless of the number of residence*
33 *or dwelling units contained in the building in which the tenant*
34 *resides, which provides for the sale, installation, or furnishing of*
35 *home improvement goods or services.*

36 *(c) In addition to the specific requirements listed under this*
37 *section, every home improvement contract shall comply with all*
38 *of the following:*

39 *(1) The writing shall be legible.*

40 ~~*(e)*~~

(2) Any printed form shall be readable. Unless a larger typeface is specified in this article, text in any printed form shall be in at least 10-point typeface and the headings shall be in at least 10-point boldface type.

~~(d)~~

(3) (A) Before any work is started, the contractor shall give the buyer a copy of the contract signed and dated by both the contractor and the buyer. The buyer's receipt of the copy ~~triggers~~ *of the contract initiates* the buyer's rights under the ~~Home Solicitation Act Civil Code~~, if the right to cancel is applicable, provided that the contract complies with ~~the Home Solicitation Act Sections 1689.5 to 1689.14, inclusive, of the Civil Code.~~

~~(e)~~

(B) *The contract shall contain on the first page, in a typeface no smaller than that generally used in the body of the document, both of the following:*

(i) The date the buyer signed the contract.

(ii) The name and address of the contractor to which the applicable "Notice of Cancellation" is to be mailed, immediately preceded by a statement advising the buyer that the "Notice of Cancellation" may be sent to the contractor at the address noted on the contract.

(4) *A statement that, upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement or swimming pool work a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the Civil Code for that portion of the work for which payment has been made.*

(5) A change-order form for changes or extra work shall be incorporated into the contract and shall become part of the contract if it is in writing and signed by the parties.

~~(f)~~

(6) *The contract shall contain, in close proximity to the signatures of the owner and contractor, a notice stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.*

(7) Change orders required by the building department at the jobsite shall be considered incorporated into the contract without being signed by both the parties.

1 ~~(g)~~

2 (8) *If the contract provides for a contractor to furnish joint*
3 *control, the contractor shall not have any financial or other*
4 *interest in the joint control.*

5 (9) *The provisions of this section are not exclusive and do not*
6 *relieve the contractor from compliance with any other applicable*
7 *provision of law.*

8 (d) *A home improvement contract and any changes to the*
9 *contract, shall be in writing and signed by the parties to the*
10 *contract, and shall include or comply with all of the following:*

11 (1) *The name, business address, and license number of the*
12 *contractor.*

13 (2) *If applicable, the name and registration number of the*
14 *home improvement salesperson that solicited or negotiated the*
15 *contract.*

16 (3) *The following heading on the contract form that identifies*
17 *the type of contract in at least 10-point boldface type: "Home*
18 *Improvement."*

19 (4) *The following statement in at least 12-point boldface type:*
20 *"You are entitled to a completely filled in copy of this agreement,*
21 *signed by both you and the contractor, before any work may be*
22 *started."*

23 (5) *The heading: "Contract Price," followed by the amount of*
24 *the contract in dollars and cents.*

25 (6) *If a finance charge will be charged, the heading: "Finance*
26 *Charge," followed by the amount in dollars and cents. The*
27 *finance charge is to be set out separately from the contract*
28 *amount.*

29 (7) *The heading: "Description of the Project and Description*
30 *of the Significant Materials to be Used and Equipment to be*
31 *Installed," followed by a description of the project and a*
32 *description of the significant materials to be used and equipment*
33 *to be installed. For swimming pools, the project description*
34 *required under this paragraph also shall include a plan and*
35 *scale drawing showing the shape, size, dimensions, and the*
36 *construction and equipment specifications.*

37 (8) *If a down payment will be charged, the details of the down*
38 *payment shall be expressed in substantially the following form,*
39 *and shall include the text of the notice as specified in*
40 *subparagraph (C):*

1 (A) The heading: “Down Payment.”

2 (B) A space where the actual down payment appears.

3 (C) The following statement in at least 12-point boldface type:

4 “THE DOWN PAYMENT MAY NOT EXCEED \$1,000 OR 10
5 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS
6 LESS.”

7 (9) If any payments, other than the down payment, is to be
8 made before the project is completed, the details of these
9 payments, known as progress payments, shall be expressed in
10 substantially the following form, and shall include the text of the
11 statement as specified in subparagraph (C):

12 (A) A schedule of progress payments shall be preceded by the
13 heading: “Schedule of Progress Payments.”

14 (B) Each progress payment shall be stated in dollars and cents
15 and specifically reference the amount of work or services to be
16 performed and any materials and equipment to be supplied.

17 (C) The section of the contract reserved for the progress
18 payments shall include the following statement in at least
19 12-point boldface type:

20 “The schedule of progress payments must specifically describe
21 each phase of work, including the type and amount of work or
22 services scheduled to be supplied in each phase, along with the
23 amount of each proposed progress payment. IT IS AGAINST
24 THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT
25 FOR WORK NOT YET COMPLETED, OR FOR MATERIALS
26 NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY
27 REQUIRE A DOWNPAYMENT.”

28 (10) The contract shall address the commencement of work to
29 be performed in substantially the following form:

30 (A) A statement that describes what constitutes substantial
31 commencement of work under the contract.

32 (B) The heading: “Approximate Start Date.”

33 (C) The approximate date on which work will be commenced.

34 (11) The estimated completion date of the work shall be
35 referenced in the contract in substantially the following form:

36 (A) The heading: “Approximate Completion Date.”

37 (B) The approximate date of completion.

38 (12) If applicable, the heading: “List of Documents to be
39 Incorporated into the Contract,” followed by the list of
40 documents incorporated into the contract.

1 (13) *The heading: “Note about Extra Work and Change*
2 *Orders,” followed by the following statement:*

3 *“Extra Work and Change Orders become part of the contract*
4 *once the order is prepared in writing and signed by the parties*
5 *prior to the commencement of any work covered by the order.*
6 *The order must describe the scope of the extra or change, the*
7 *cost to be added or subtracted from the contract, and the effect*
8 *the order will have on the schedule of progress payments.*
9 *Change orders required by the building department at the jobsite*
10 *shall be considered incorporated into the contract without being*
11 *signed by both parties.”*

12 *(e) All of the following notices shall be provided to the owner*
13 *as part of the contract form as specified or, if otherwise*
14 *authorized under this subdivision, may be provided as an*
15 *attachment to the contract:*

16 *(1) A notice that failure by the contractor without lawful*
17 *excuse to substantially commence work within 20 days from the*
18 *approximate date specified in the contract when work will begin*
19 *is a violation of the Contractors’ State License Law.*

20 *(2) A notice concerning commercial general liability*
21 *insurance. This notice may be provided as an attachment to the*
22 *contract if the contract includes the following statement: “A*
23 *notice concerning commercial general liability insurance is*
24 *attached to this contract.” The notice shall include the heading*
25 *“Commercial General Liability Insurance (CGL),” followed by*
26 *whichever of the following statements is both relevant and*
27 *correct:*

28 *(A) “(The name on the license or ‘This contractor’) does not*
29 *carry commercial general liability insurance.”*

30 *(B) “(The name on the license or ‘This contractor’) carries*
31 *commercial general liability insurance written by (the insurance*
32 *company). You may call the (insurance company) at _____*
33 *to check the contractor’s insurance coverage.”*

34 *(C) “(The name on the license or ‘This contractor’) is*
35 *self-insured.”*

36 *(3) A notice concerning workers’ compensation insurance.*
37 *This notice may be provided as an attachment to the contract if*
38 *the contract includes the statement: “A notice concerning*
39 *workers’ compensation insurance is attached to this contract.”*
40 *The notice shall include the heading “Workers’ Compensation*

1 Insurance” followed by whichever of the following statements is
2 correct:

3 (A) “(The name on the license or ‘This contractor’) has no
4 employees and is exempt from workers’ compensation
5 requirements.”

6 (B) “(The name on the license or ‘This contractor’) carries
7 workers’ compensation insurance for all employees.”

8 (4) A notice that provides the buyer with the following
9 information about the performance of extra or change-order
10 work:

11 (A) A statement that the buyer may not require a contractor to
12 perform extra or change-order work without providing written
13 authorization.

14 (B) A statement informing the buyer that extra work or a
15 change order is not enforceable against a buyer unless the
16 change order also identifies all of the following in writing:

17 (i) The scope of work encompassed by the order.

18 (ii) The amount to be added or subtracted from the contract.

19 (iii) The effect the order will make in the progress payments or
20 the completion date.

21 (C) A statement informing the buyer that the contractor’s
22 failure to comply with the requirements of this paragraph does
23 not preclude the recovery of compensation for work performed
24 based upon legal or equitable remedies designed to prevent
25 unjust enrichment.

26 (5) A notice with the heading “Mechanics’ Lien Warning”
27 written as follows:

28 “MECHANICS LIEN WARNING:

29 Anyone who helps improve your property, but who is not paid,
30 may record what is called a mechanics’ lien on your property. A
31 mechanics’ lien is a claim, like a mortgage or home equity loan,
32 made against your property and recorded with the county
33 recorder.

34 Even if you pay your contractor in full, unpaid subcontractors,
35 suppliers, and laborers who helped to improve your property
36 may record mechanics’ liens and sue you in court to foreclose
37 the lien. If a court finds the lien is valid, you could be forced to
38 pay twice or have a court officer sell your home to pay the lien.
39 Liens can also affect your credit.

1 *To preserve their right to record a lien, each subcontractor*
2 *and material supplier must provide you with a document called a*
3 *'20-day Preliminary Notice.' This notice is not a lien. The*
4 *purpose of the notice is to let you know that the person who sends*
5 *you the notice has the right to record a lien on your property if*
6 *he or she is not paid.*

7 *BE CAREFUL. The Preliminary Notice can be sent up to 20*
8 *days after the subcontractor starts work or the supplier provides*
9 *material. This can be a big problem if you pay your contractor*
10 *before you have received the Preliminary Notices.*

11 *You will not get Preliminary Notices from your prime*
12 *contractor or from laborers who work on your project. The law*
13 *assumes that you already know they are improving your*
14 *property.*

15 *PROTECT YOURSELF FROM LIENS. You can protect*
16 *yourself from liens by getting a list from your contractor of all*
17 *the subcontractors and material suppliers that work on your*
18 *project. Find out from your contractor when these*
19 *subcontractors started work and when these suppliers delivered*
20 *goods or materials. Then wait 20 days, paying attention to the*
21 *Preliminary Notices you receive.*

22 *PAY WITH JOINT CHECKS. One way to protect yourself is to*
23 *pay with a joint check. When your contractor tells you it is time*
24 *to pay for the work of a subcontractor or supplier who has*
25 *provided you with a Preliminary Notice, write a joint check*
26 *payable to both the contractor and the subcontractor or material*
27 *supplier.*

28 *For other ways to prevent liens, visit CSLB's Web site at*
29 *www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).*

30 *REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A*
31 *LIEN PLACED ON YOUR HOME. This can mean that you may*
32 *have to pay twice, or face the forced sale of your home to pay*
33 *what you owe."*

34 *(6) The following notice shall be provided in at least 12-point*
35 *typeface: "Information about the Contractors' State License*
36 *Board (CSLB): CSLB is the state consumer protection agency*
37 *that licenses and regulates construction contractors.*

38 *Contact CSLB for information about the licensed contractor*
39 *you are considering, including information about disclosable*

1 *complaints, disciplinary actions and civil judgments that are*
2 *reported to CSLB.*

3 *Use only licensed contractors. If you file a complaint against a*
4 *licensed contractor within the legal deadline (usually four years),*
5 *CSLB has authority to investigate the complaint. If you use an*
6 *unlicensed contractor, CSLB may not be able to help you resolve*
7 *your complaint. Your only remedy may be in civil court, and you*
8 *may be liable for damages arising out of any injuries to the*
9 *unlicensed contractor or the unlicensed contractor's employees.*

10 *For more information:*

11 *Visit CSLB's Web site at www.cslb.ca.gov*

12 *Call CSLB at 800-321-CSLB (2752)*

13 *Write CSLB at P.O. Box 26000, Sacramento, CA 95826."*

14 *(7) (A) The notice set forth in subparagraph (B) and entitled*
15 *"Three-day Right to Cancel," shall be provided to the buyer*
16 *unless the contract is:*

17 *(i) Negotiated at the contractor's place of business.*

18 *(ii) Subject to the "Seven-Day Right to Cancel," as set forth in*
19 *paragraph (8).*

20 *(iii) Subject to licensure under the Alarm Company Act*
21 *(Chapter 11.6 (commencing with Section 7590)), provided the*
22 *alarm company licensee complies with Sections 1689.5, 1689.6,*
23 *and 1689.7 of the Civil Code, as applicable.*

24 *(B) "Three-Day Right to Cancel*

25 *You, the buyer, have the right to cancel this contract within*
26 *three business days. You may cancel by e-mailing, mailing,*
27 *faxing, or delivering a written notice to the contractor at the*
28 *contractor's place of business by midnight of the third business*
29 *day after you received a signed and dated copy of the contract*
30 *that includes this notice. Include your name, your address, and*
31 *the date you received the signed copy of the contract and this*
32 *notice.*

33 *If you cancel, the contractor must return to you anything you*
34 *paid within 10 days of receiving the notice of cancellation. For*
35 *your part, you must make available to the contractor at your*
36 *residence, in substantially as good condition as you received it,*
37 *any goods delivered to you under this contract or sale. Or, you*
38 *may, if you wish, comply with the contractor's instructions on*
39 *how to return the goods at the contractor's expense and risk. If*
40 *you do make the goods available to the contractor and the*

contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.”

(C) The “Three-Day Right to Cancel” notice required by this paragraph shall comply with all of the following:

- (i) The text of the notice is at least 12-point boldface type.
- (ii) The notice is in immediate proximity to a space reserved for the owner’s signature.
- (iii) The owner acknowledges receipt of the notice by signing and dating the notice form in the signature space.
- (iv) The notice is written in the same language, e.g. Spanish, as that principally used in any oral sales presentation.
- (v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of the Three-Day Right to Cancel.’”
- (vi) The notice shall be accompanied by a completed form in duplicate, captioned “Notice of Cancellation,” which shall also be attached to the agreement or offer to purchase and be easily detachable, and which shall contain the following statement written in the same language, e.g., Spanish, as used in the contract:

“Notice of Cancellation”

/enter date of transaction/

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

I hereby cancel this transaction. _____
(Date)

You, the buyer, have the right to cancel this contract within seven business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and

1 the date you received the signed copy of the contract and this
2 notice.

3 If you cancel, the contractor must return to you anything you
4 paid within 10 days of receiving the notice of cancellation. For
5 your part, you must make available to the contractor at your
6 residence, in substantially as good condition as you received it,
7 any goods delivered to you under this contract or sale. Or, you
8 may, if you wish, comply with the contractor's instructions on
9 how to return the goods at the contractor's expense and risk. If
10 you do make the goods available to the contractor and the
11 contractor does not pick them up within 20 days of the date of
12 your notice of cancellation, you may keep them without any
13 further obligation. If you fail to make the goods available to the
14 contractor, or if you agree to return the goods to the contractor
15 and fail to do so, then you remain liable for performance of all
16 obligations under the contract."

17 (B) The "Seven-Day Right to Cancel" notice required by this
18 subdivision shall comply with all of the following:

- 19 (i) The text of the notice is at least 12-point boldface type.
- 20 (ii) The notice is in immediate proximity to a space reserved
21 for the owner's signature.
- 22 (iii) The owner acknowledges receipt of the notice by signing
23 and dating the notice form in the signature space.
- 24 (iv) The notice is written in the same language, e.g. Spanish,
25 as that principally used in any oral sales presentation.
- 26 (v) The notice may be attached to the contract if the contract
27 includes, in at least 12-point boldface type, a checkbox with the
28 following statement: "The law requires that the contractor give
29 you a notice explaining your right to cancel. Initial the checkbox
30 if the contractor has given you a 'Notice of the Seven-Day Right
31 to Cancel.'"
- 32 (vi) The notice shall be accompanied by a completed form in
33 duplicate, captioned "Notice of Cancellation," which shall also
34 be attached to the agreement or offer to purchase and be easily
35 detachable, and which shall contain the following statement
36 written in the same language, e.g., Spanish, as used in the
37 contract:

38
39 "Notice of Cancellation"

40 /enter date of transaction/

(Date)

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____,

/name of seller/

at _____

/address of seller's place of business/

not later than midnight of _____.

(Date)

I hereby cancel this transaction.

(Date)

(Buyer's signature)

1 *SEC. 3. Section 7159.3 of the Business and Professions Code,*
2 *as added by Section 6 of Chapter 566 of the Statutes of 2004, is*
3 *repealed.*

4 ~~7159.3. This section applies to all home improvement~~
5 ~~contracts, as defined in Section 7151.2, between an owner or~~
6 ~~tenant and a contractor, whether a general contractor or a~~
7 ~~specialty contractor, who is licensed or subject to be licensed~~
8 ~~pursuant to this chapter with regard to the transaction. Failure by~~
9 ~~the licensee, or a person subject to be licensed under this chapter,~~
10 ~~or by his or her agent or salesperson, to provide the following~~
11 ~~information, notices, and disclosures in the contract is cause for~~
12 ~~discipline:~~

13 ~~(a) The name, business address, and license number of the~~
14 ~~contractor and the description of the license classification~~
15 ~~relevant to the project.~~

16 ~~(b) The name and registration number of the home~~
17 ~~improvement salesperson, if any.~~

18 ~~(c) A notice concerning commercial general liability~~
19 ~~insurance. This notice may be provided as an attachment to the~~
20 ~~contract if the contract includes the statement, "A notice~~
21 ~~concerning commercial general liability insurance is attached to~~
22 ~~this contract." The notice shall include the heading "Commercial~~
23 ~~General Liability Insurance (CGL)," followed by whichever of~~
24 ~~the following statements is both relevant and correct:~~

25 ~~(1) "(The name on the license or 'This contractor') does not~~
26 ~~carry commercial general liability insurance."~~

27 ~~(2) "(The name on the license or 'This contractor') carries~~
28 ~~commercial general liability insurance written by (the insurance~~
29 ~~company). You may call the (insurance company) at _____~~
30 ~~to check the contractor's insurance coverage."~~

31 ~~(3) "(The name on the license or 'This contractor') is~~
32 ~~self-insured."~~

33 ~~(d) A notice concerning workers' compensation insurance.~~
34 ~~This notice may be provided as an attachment to the contract if~~
35 ~~the contract includes the statement "A notice concerning~~
36 ~~workers' compensation insurance is attached to this contract."~~
37 ~~The notice shall include the heading "Workers' Compensation~~
38 ~~Insurance" followed by whichever of the following statements is~~
39 ~~correct:~~

1 ~~(1) “(The name on the license or ‘This contractor’) has no~~
2 ~~employees and is exempt from workers’ compensation~~
3 ~~requirements.”~~

4 ~~(2) “(The name on the license or ‘This contractor’) carries~~
5 ~~workers’ compensation insurance for all employees.”~~

6 ~~SEC. 4. Section 7159.4 of the Business and Professions Code~~
7 ~~is repealed.~~

8 ~~7159.4. This section applies to all home improvement~~
9 ~~contracts, as defined in Section 7151.2, between an owner or~~
10 ~~tenant and a contractor, whether a general contractor or a~~
11 ~~specialty contractor, who is licensed or subject to be licensed~~
12 ~~pursuant to this chapter with regard to the transaction. Failure by~~
13 ~~the licensee, or a person subject to be licensed under this chapter,~~
14 ~~or by his or her agent or salesperson, to provide the following~~
15 ~~information, notices, and disclosures in the contract is cause for~~
16 ~~discipline:~~

17 ~~(a) Notice of the type of contract in at least 10-point boldface~~
18 ~~type: “Home Improvement.”~~

19 ~~(b) The notice in at least 12-point boldface type: “Notice to the~~
20 ~~Buyer: You are entitled to a completely filled in copy of this~~
21 ~~agreement, signed by both you and the contractor, before any~~
22 ~~work may be started.”~~

23 ~~(c) The heading: “Contract Price,” followed by the amount of~~
24 ~~the contract in dollars and cents.~~

25 ~~(d) If a finance charge will be charged, the heading: “Finance~~
26 ~~Charge” followed by the amount in dollars and cents. The~~
27 ~~finance charge is to be set out separately from the contract~~
28 ~~amount.~~

29 ~~(e) The heading: “Description of the Project and Description~~
30 ~~of the Significant Materials to be Used and Equipment to be~~
31 ~~Installed,” followed by a description of the project and a~~
32 ~~description of the significant materials to be used and equipment~~
33 ~~to be installed.~~

34 ~~(f) For swimming pools, in addition to the project description~~
35 ~~required under subdivision (e), a plan and scale drawing showing~~
36 ~~the shape, size, dimensions, and the construction and equipment~~
37 ~~specifications.~~

38 ~~(g) If a down payment will be charged, the heading: “Down~~
39 ~~Payment” and a space where the actual down payment appears~~
40 ~~followed by the text in at least 12-point boldface type: “THE~~

~~DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.”~~

~~(h) If any payment, besides the down payment, is to be made before the project is completed, the contract shall include a schedule with a heading labeled “Schedule of Progress Payments,” stated in dollars and cents and specifically referencing the amount of work or services to be performed and any materials and equipment to be supplied, and the following statement in at least 12-point boldface type:~~

~~“The schedule of progress payments must specifically describe each phase of work, including the type and amount of work or services scheduled to be supplied in each phase, along with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT.”~~

~~(i) The heading: “Approximate Start Date” and “Approximate Completion Date,” each followed by the approximate dates for start and completion:~~

~~(j) If applicable, the heading, “List of Documents to be Incorporated into the Contract,” followed by the list of documents incorporated into the contract.~~

~~(k) The heading: “Note about Extra Work and Change Orders” followed by the following statement:~~

~~“Extra Work and Change Orders become part of the contract once the order is prepared in writing and signed by the parties. The order must describe the scope of the extra or change, the cost to be added or subtracted from the contract, and the effect the order will have on the schedule of progress payments. Change orders required by the building department at the jobsite shall be considered incorporated into the contract without being signed by both parties.”~~

~~(l) (1) Except when the contract is negotiated at the contractor’s place of business, the statement found in paragraph (4) of subdivision (a) of Section 1689.7 of the Civil Code for the three-day right to cancel or the statement found in paragraph (2) of subdivision (c) of Section 1689.7 for the seven-day right to cancel, whichever is relevant. A statement that complies with~~

1 Section 1689.7 may be attached to the contract if the contract
2 includes a checkbox and whichever statement is relevant in at
3 least 12-point boldface type:

4 (A) “The law requires that the contractor give you a notice
5 explaining your right to cancel. Initial the checkbox if the
6 contractor has given you a ‘Notice of the Three-Day Right to
7 Cancel.’”

8 (B) “The law requires that the contractor give you a notice
9 explaining your right to cancel. Initial the checkbox if the
10 contractor has given you a ‘Notice of the Seven-Day Right to
11 Cancel.’”

12 (2) This subdivision does not apply to home improvement
13 contracts entered into by a person who holds an alarm company
14 operator’s license issued pursuant to Chapter 11.6 (commencing
15 with Section 7590), provided the person complies with Sections
16 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

17 (m) The signatures of the contractor or the contractor’s
18 representative, and the buyer.

19 (n) The date the contract was signed.

20 (o) A statement with the heading “Mechanics’ Lien Warning”
21 as follows:

22 “MECHANICS LIEN WARNING:

23 Anyone who helps improve your property, but who is not paid,
24 may record what is called a mechanics’ lien on your property. A
25 mechanics’ lien is a claim, like a mortgage or home equity loan,
26 made against your property and recorded with the county
27 recorder.

28 Even if you pay your contractor in full, unpaid subcontractors,
29 suppliers, and laborers who helped to improve your property may
30 record mechanics’ liens and sue you in court to foreclose the lien.
31 If a court finds the lien is valid, you could be forced to pay twice
32 or have a court officer sell your home to pay the lien. Liens can
33 also affect your credit.

34 To preserve their right to record a lien, each subcontractor and
35 material supplier must provide you with a document called a
36 ‘20-day Preliminary Notice.’ This notice is not a lien. The
37 purpose of the notice is to let you know that the person who
38 sends you the notice has the right to record a lien on your
39 property if he or she is not paid.

1 ~~BE CAREFUL. The Preliminary Notice can be sent up to 20~~
2 ~~days after the subcontractor starts work or the supplier provides~~
3 ~~material. This can be a big problem if you pay your contractor~~
4 ~~before you have received the Preliminary Notices.~~

5 ~~You will not get Preliminary Notices from your prime~~
6 ~~contractor or from laborers who work on your project. The law~~
7 ~~assumes that you already know they are improving your~~
8 ~~property.~~

9 ~~PROTECT YOURSELF FROM LIENS. You can protect~~
10 ~~yourself from liens by getting a list from your contractor of all~~
11 ~~the subcontractors and material suppliers that work on your~~
12 ~~project. Find out from your contractor when these subcontractors~~
13 ~~started work and when these suppliers delivered goods or~~
14 ~~materials. Then wait 20 days, paying attention to the Preliminary~~
15 ~~Notices you receive.~~

16 ~~PAY WITH JOINT CHECKS. One way to protect yourself is~~
17 ~~to pay with a joint check. When your contractor tells you it is~~
18 ~~time to pay for the work of a subcontractor or supplier who has~~
19 ~~provided you with a Preliminary Notice, write a joint check~~
20 ~~payable to both the contractor and the subcontractor or material~~
21 ~~supplier.~~

22 ~~For other ways to prevent liens, visit CSLB's Web site at~~
23 ~~www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).~~

24 ~~REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING~~
25 ~~A LIEN PLACED ON YOUR HOME. This can mean that you~~
26 ~~may have to pay twice, or face the forced sale of your home to~~
27 ~~pay what you owe."~~

28 *SEC. 5. Section 7167 of the Business and Professions Code is*
29 *amended to read:*

30 7167. (a) Any contract the primary purpose of which is the
31 construction of a swimming pool—~~which that~~ does not
32 substantially comply with ~~the applicable provisions of~~
33 ~~subdivisions (b), (c), (d), (e), (f), and (h) paragraph (4) of~~
34 ~~subdivision (c) or paragraph (7), (8), or (9) of subdivision (d) of~~
35 *Section 7159, or Section 7159.6, shall be void and unenforceable*
36 *by the contractor as contrary to public policy.*

37 (b) *Failure by the contractor to comply with Section 7159.6*
38 *does not preclude the recovery of compensation for work*
39 *performed based on quasi-contract, quantum meruit, restitution,*

1 *or other similar legal or equitable remedies designed to prevent*
2 *unjust enrichment.*

3 *SEC. 6. Section 1689.7 of the Civil Code, as amended by*
4 *Section 17 of Chapter 566 of the Statutes of 2004, is amended to*
5 *read:*

6 1689.7. (a) (1) Except for contracts written pursuant to
7 Sections 7151.2 and 7159.10 of the Business and Professions
8 Code, in a home solicitation contract or offer, the buyer's
9 agreement or offer to purchase shall be written in the same
10 language, e.g., Spanish, as principally used in the oral sales
11 presentation, shall be dated, shall be signed by the buyer, and
12 except as provided in paragraph (2), shall contain in immediate
13 proximity to the space reserved for his or her signature a
14 conspicuous statement in a size equal to at least 10-point
15 boldface type, as follows: "You, the buyer, may cancel this
16 transaction at any time prior to midnight of the third business day
17 after the date of this transaction. See the attached notice of
18 cancellation form for an explanation of this right."

19 (2) The statement required pursuant to this subdivision for a
20 home solicitation contract or offer for the purchase of a personal
21 emergency response unit, as defined in Section 1689.6, ~~which~~
22 *that* is not installed with and as part of a home security alarm
23 system subject to the Alarm Company Act (Chapter 11.6
24 (commencing with Section 7590) of Division 3 of the Business
25 and Professions Code) ~~which that~~ has two or more stationary
26 protective devices used to enunciate an intrusion or fire and is
27 installed by an alarm company operator operating under a current
28 license issued pursuant to the Alarm Company Act, is as follows:
29 "You, the buyer, may cancel this transaction at any time prior to
30 midnight of the seventh business day after the date of this
31 transaction. See the attached notice of cancellation form for an
32 explanation of this right."

33 (3) Except for contracts written pursuant to Sections 7151.2
34 and 7159.10 of the Business and Professions Code, the statement
35 required pursuant to this subdivision for the repair or restoration
36 of residential premises damaged by a disaster pursuant to
37 subdivision (c) of Section 1689.6 is as follows: "You, the buyer,
38 may cancel this transaction at any time prior to midnight of the
39 seventh business day after the date of this transaction. See the

1 attached notice of cancellation form for an explanation of this
2 right.”

3 (4) A home solicitation contract written pursuant to Section
4 7151.2 of the Business and Professions Code shall be written in
5 the same language, e.g., Spanish, as principally used in the oral
6 sales presentation. The contract, or an attachment to the contract
7 ~~that complies with subdivision (l) of Section 7159.4~~ *is subject to*
8 *Section 7159* of the Business and Professions Code shall include
9 in immediate proximity to the space reserved for his or her
10 signature, the following statement in a size equal to at least
11 12-point boldface type, which shall be dated and signed by the
12 buyer:

13 “Three-Day Right to Cancel

14 You, the buyer, have the right to cancel this contract within
15 three business days. You may cancel by e-mailing, mailing,
16 faxing, or delivering a written notice to the contractor at the
17 contractor’s place of business by midnight of the third business
18 day after you received a signed and dated copy of the contract
19 that includes this notice. Include your name, your address, and
20 the date you received the signed copy of the contract and this
21 notice.

22 If you cancel, the contractor must return to you anything you
23 paid within 10 days of receiving the notice of cancellation. For
24 your part, you must make available to the contractor at your
25 residence, in substantially as good condition as you received it,
26 any goods delivered to you under this contract or sale. Or, you
27 may, if you wish, comply with the contractor’s instructions on
28 how to return the goods at the contractor’s expense and risk. If
29 you do make the goods available to the contractor and the
30 contractor does not pick them up within 20 days of the date of
31 your notice of cancellation, you may keep them without any
32 further obligation. If you fail to make the goods available to the
33 contractor, or if you agree to return the goods to the contractor
34 and fail to do so, then you remain liable for performance of all
35 obligations under the contract.”

36 (5) A home solicitation contract written pursuant to Section
37 7159.10 of the Business and Professions Code shall be written in
38 the same language, e.g., Spanish, as principally used in the oral
39 sales presentation. The contract, or an attachment to the contract
40 that complies with subdivision ~~(k)~~(l) of Section 7159.13 of the

1 Business and Professions Code shall include, in immediate
2 proximity to the space reserved for his or her signature, the
3 following statement in a size equal at least to 12-point boldface
4 type, which shall be dated and signed by the buyer:

5 “YOUR RIGHTS TO CANCEL BEFORE WORK BEGINS

6 You, the buyer, have the right to cancel this contract until:

7 1. You receive a copy of this contract signed and dated by you
8 and the contractor; and

9 2. The contractor starts work.

10 However, even if the work has begun you, the buyer, may still
11 cancel the contract within three business days if the contract
12 price is more than seven hundred fifty dollars (\$750), or if you,
13 did not initiate the contact with the contractor to request the
14 work, or if the contractor sold you goods or services beyond
15 those reasonably necessary to take care of the particular problem
16 that caused you to contact the contractor, or if the payment was
17 due before the work was complete.

18 If any of these reasons for canceling occurred, you may cancel
19 the contract by e-mailing, mailing, faxing, or delivering a written
20 notice to the contractor at the contractor’s place of business
21 within three business days of the date you received a signed and
22 dated copy of this contract. Include your name, your address, and
23 the date you received a signed copy of the contract and this
24 notice.

25 If you cancel, the contractor must return to you anything you
26 paid within 10 days of receiving the notice of cancellation. For
27 your part, you must make available to the contractor at your
28 residence, in substantially as good condition as you received it,
29 any goods delivered to you under this contract or sale. Or, you
30 may, if you wish, comply with the contractor’s instructions on
31 how to return the goods at the contractor’s expense and risk. If
32 you do make the goods available to the contractor and the
33 contractor does not pick them up within 20 days of the date of
34 your notice of cancellation, you may keep them without any
35 further obligation. If you fail to make the goods available to the
36 contractor, or if you agree to return the goods to the contractor
37 and fail to do so, then you remain liable for performance of all
38 obligations under the contract.”

39 (b) The agreement or offer to purchase shall contain on the
40 first page, in a type size no smaller than that generally used in the

body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c) Except for contracts written pursuant to Sections 7151.2 and 7159.10 of the Business and Professions Code, or as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send telegram

to _____,
/name of seller/

at _____
/address of seller's place of business/

not later than midnight of _____.
(Date)

I hereby cancel this transaction. _____
(Date)

(Buyer's signature)

(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, shall be subject to the requirements of subdivision (c), and shall be accompanied by the "Notice of Cancellation" required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(e) (1) Except for contracts written pursuant to Sections 7151.2 and 7159.10 of the Business and Professions Code, any agreement or offer to purchase services for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, shall be subject to the requirements of subdivision (c) of this section, and shall be accompanied by the "Notice of Cancellation" required by subdivision (c) of this section, except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(2) A home solicitation contract written pursuant to Section 7151.2 of the Business and Professions Code for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, shall be written in the same language, e.g. Spanish, as principally used in the oral sales presentation. The contract, or an attachment to the contract that ~~complies with subdivision (d) of Section 7159.4~~ *is subject to Section 7159* of the Business and Professions Code shall include, in immediate proximity to the space reserved for his or her signature, the following statement in a size equal to at least 12-point boldface type, which shall be signed and dated by the buyer:

“Seven-Day Right to Cancel

You, the buyer, have the right to cancel this contract within seven business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor’s place of business by midnight of the seventh business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor’s instructions on how to return the goods at the contractor’s expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.”

(3) A home solicitation contract written pursuant to Section 7159.10 of the Business and Professions Code for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, be written in the same language, e.g. Spanish, as principally used in the oral sales

1 presentation. The contract, or an attachment to the contract that
2 complies with subdivision ~~(k)~~(l) of Section ~~7159.4~~ 7159.13 of the
3 Business and Professions Code shall include, in immediate
4 proximity to the space reserved for his or her signature, the
5 following statement in a size equal to at least 12-point boldface
6 type, which shall be signed and dated by the buyer:

7 **“YOUR RIGHTS TO CANCEL BEFORE WORK BEGINS**

8 You, the buyer, have the right to cancel until both of the
9 following events have occurred:

10 1. You receive a copy of this contract, signed and dated by you
11 and the contractor; ~~and~~.

12 2. The contractor starts work.

13 However, even if the work has begun, you, the buyer, may still
14 cancel the contract within seven business days if the contract
15 price is more than seven hundred fifty dollars (\$750), or if you
16 did not initiate the contact with the contractor to request the
17 work, or if the contractor sold you goods or services beyond
18 those reasonably necessary to take care of the particular problem
19 that caused you to contact the contractor, or if the payment was
20 due before the work was complete.

21 If any of these reasons for canceling occurred, you may cancel
22 the contract by e-mailing, mailing, faxing, or delivering a written
23 notice to the contractor at the contractor’s place of business
24 within seven business days of the date you received a signed and
25 dated copy of the contract that includes this notice. Include your
26 name, your address, and the date you received a signed copy of
27 the contract and this notice.

28 *If you cancel, the contractor must return to you anything you*
29 *paid within 10 days of receiving the notice of cancellation. For*
30 *your part, you must make available to the contractor at your*
31 *residence, in substantially as good condition as you received it,*
32 *any goods delivered to you under this contract or sale. Or, you*
33 *may, if you wish, comply with the contractor’s instructions on*
34 *how to return the goods at the contractor’s expense and risk. If*
35 *you do make the goods available to the contractor and the*
36 *contractor does not pick them up within 20 days of the date of*
37 *your notice of cancellation, you may keep them without any*
38 *further obligation. If you fail to make the goods available to the*
39 *contractor, or if you agree to return the goods to the contractor*

1 *and fail to do so, then you remain liable for performance of all*
2 *obligations under the contract.”*

3 (f) The seller shall provide the buyer with a copy of the
4 contract or offer to purchase and the attached notice of
5 cancellation, and shall inform the buyer orally of his or her right
6 to cancel and the requirement that cancellation be in writing, at
7 the time the home solicitation contract or offer is executed.

8 (g) Until the seller has complied with this section the buyer
9 may cancel the home solicitation contract or offer.

10 (h) “Contract or sale” as used in subdivision (c) means “home
11 solicitation contract or offer” as defined by Section 1689.5.